IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4120 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TEJABHAI BHIMABHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4120 of 2004

MR MB GOHIL for Petitioner No. 1

Mr. Nagesh Sood, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 05/07/2004

ORAL JUDGEMENT

Rule. Mr. Nagesh Sood, learned AGP waives of service of Rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. What is challenged in the present Special Civil

Application is the order passed by the revisional authority, i.e. the learned Special Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad, dated 15th March 2004 in Revision Application No. 8 of 2004 by which the revisional authority has refused to grant stay of the impugned order during the pendency and final disposal of the said revision application before him.

3. Being aggrieved and dissatisfied with the order passed by the Collector, Rajkot, dated 26.12.2003/9.1.2004, the petitioner had preferred revision application before the State Government, i.e. learned Special Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad, along with an application for stay. However, by communication/order dated 15th March 2004, the petitioner was informed that as there is no provision to grant interim relief during the pendency of the revision application the same is rejected. The said order dated 15th March 2004 is challenged before this Court in the present Special Civil Application.

4. Shri MB Gohil, learned advocate appearing on behalf of the petitioner has submitted that the revisional authority has fallen in error in refusing to grant interim relief by observing that there is no provision for grant of interim relief during pendency of revision application. Shri Gohil has further submitted that as such when the revisional authority is exercising the quasi-judicial powers he is having the power to grant interim relief during the pendency of revision application also. Not only that but he is required to assign the reasons if he is not inclined to grant any interim relief.

5. Heard the learned advocate appearing on behalf of the parties. It is an admitted position that while refusing to grant interim relief during the pendency of revision application, what is observed by the revisional authority is that there is no provision to grant interim relief during the pendency of the revision application. As held by this Court in the case of Dalchand Mangilal Vs. State of Gujarat & Another - 1998 (1) GLH (UJ) 12, eventhough the State Government having revisional jurisdiction has got powers to consider the application for stay, if it is not inclined to grant any stay then the State Government is bound to give reasons. It is also observed by this Court in the aforesaid judgment that not giving reasons for rejecting the said application amounts to acting in an arbitrary manner. When the revisional authority is exercising the quasi-judicial powers, he is certainly having powers to

grant the application for stay. Normally, stay is granted during pendency of revision applications. However, if for some valid reasons the revisional authority is not inclined to grant stay during the pendency of the revision application, then he can do so, but he is required to assign reasons for not granting interim relief. Under the circumstances, the impugned order/communication dated 15th March 2004 passed in Revision Application No. 8 of 2004 is required to be quashed and set aside and the same is quashed and set aside. The revisional authority is directed to consider the application of the petitioner for stay afresh and in accordance with law after giving opportunity of being heard to the petitioner. Such an exercise is required to be undertaken by the revisional authority as early as possible, preferably within the period of three weeks from the date of receipt of this order. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

rmr.